

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA AMENDING CHAPTER 13, LICENSES AND BUSINESS REGULATIONS OF THE CODE OF ORDINANCES BY DELETING ARTICLE IV ADULT ENTERTAINMENT AND MASSAGE PARLORS IN ITS ENTIRETY. PROVIDING ARTICLE IV ENTITLED SEXUALLY ORIENTED BUSINESS. PROVING FOR PURPOSE AND INTENT PROVIDING FOR DEFINITIONS; PROVIDING FOR A CLASSIFICATION OF SEXUALLY ORIENTED BUSINESSES, PROVIDING FOR LICENSING AND REGULATION OF SUCH BUSINESSES; PROVIDING FOR FEES; PROVIDING FOR THE INSPECTION, EXPIRATION, SUSPENSION AND REVOCATION OF SEXUALLY ORIENTED BUSINESS; PROVIDING FOR HEARING AND APPEALS; PROVIDING FOR HOURS OF OPERATION; PROVIDING SUPPLEMENTAL REGULATIONS AND DESIGN STANDARDS PERTAINING TO SEXUALLY ORIENTED BUSINESS USES; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE .

**WHEREAS**, sexually oriented businesses require special supervision from the public safety agencies of the Town in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the Town; and

**WHEREAS**, the Town Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, the concern over sexually transmitted diseases is a legitimate health concern of the Town which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

**WHEREAS**, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

**WHEREAS**, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

**WHEREAS**, the Town Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, the Town Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this Town; and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the United States Constitution and the Florida Constitution, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

**WHEREAS**, it is not the intent of the Town Council to condone or legitimize the distribution of obscene material, and the Town Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

**SECTION 13-66: PURPOSE AND FINDINGS.**

(A) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

(B) Findings. Based on evidence concerning the adverse secondary effects of sexually oriented business uses on the community presented in hearings and in reports made available to the Town Council, and on findings incorporated in, but not limited to, the following cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, TDA "Kandyland", 529 U.S. 277 (2000), and *City of Los Angeles v. Alameda Books, Inc.* 121 S. Ct. 1223 (2001) *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); 475 U.S. 41 (1986); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *California v. LaRue*, 409 U.S. 109 (1972); *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County*, 337 F.3d 1251 (11th Cir. 2003); *Gary v. City of Warner Robins*, 311 F. 3d 1334 (11th Cir. 2002); *Ward v. County of Orange*, 217 F. 3d 1350 (11th Cir. 2000); *Boss Capital, Inc. v. City of Casselberry*, 187 F. 3d 1251 (11th Cir. 1999); *David Vincent, Inc. v. Broward County*, 200 F. 3d 1325 (11th Cir. 2000); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F.Supp. 1428 (M.D. Fla. 1997); *Grand Falcon Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *International Food & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986) and other cases; and on studies and reports of secondary effects occurring in other communities around sexually oriented businesses, including but not limited to, Phoenix, Arizona - 1979; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - 1977; and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York

Times Square study - 1994; Phoenix, Arizona -1995-98; Manatee County, Florida study -1987; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); the Town Council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, pornographic litter, and sexual assault and exploitation.

(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other certain uses, such as other sexually oriented businesses, and establishments licensed to sell alcoholic beverages, to minimize the secondary effects associated with such uses and to prevent a concentration of sexually oriented businesses and such uses.

(3) Each of the foregoing negative secondary effects constitutes a harm which the Town has a substantial government interest in preventing and/or abating.

(4) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(5) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(6) Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(7) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(8) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(9) The findings noted in paragraphs number 1 through 8 raise substantial governmental concerns.

(10) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns and each of the foregoing negative secondary effects constitutes a harm which the Town has a substantial government interest in preventing and/or abating.

(11) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such

a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(12) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(13) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(14) The fact that an applicant for a sexually oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

(15) The general welfare, health, morals and safety of the citizens of the Town will be promoted by the enactment of this ordinance.

#### **ARTICLE IV. ~~ADULT ENTERTAINMENT AND MASSAGE PARLORS~~**

##### **Sec. 13-66. Definitions.**

~~The following words when used in this article shall have the meaning ascribed herein unless the context clearly indicates otherwise.~~

~~*Adult book store* means and includes an establishment having as a substantial or significant portion of the stock in trade, books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, or an establishment with a segment or section devoted to the sale or display of such material.~~

~~*Adult motion picture theater* means and includes building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below, for observation by patrons therein.~~

~~*Alcoholic beverages* shall mean and include any beverage containing more than one (1) percent of alcohol by weight.~~

~~*Cabaret* shall mean and include any place of business or establishment which features the following naked, topless or bottomless employees: Dancers, entertainers or waitresses, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar employees. The term cabaret shall also mean and include any place wherein any type of alcoholic beverage is sold or given away for consumption on the premises and the operator thereof holds a license from the State of Florida to sell alcoholic beverages for consumption on the premises and wherein the patrons are provided with entertainment or space for dancing.~~

~~*Designated use* shall mean and include such designated uses or accessory uses as shall be included in this article.~~

~~*Encounter studio* shall mean and include all establishments offering nude encounter sessions, encounter sessions between males and females, nude dance encounter sessions and sexual consultations.~~

~~Massage establishment shall mean and include any shop, parlor, establishment or place of business wherein all or any one or more of the following named subjects and methods of treatments are administered or practiced:-~~

~~(1) Oil rubs, salt glows, hot or cold packs, all kinds of baths including steam rooms, cabinet baths, sitz baths, colon irrigations, body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), applying such movements as stroking, friction, rolling, vibration, kneading, cupping, petrissage, rubbing, effleurage or tapotement.~~

~~(2) Nothing in this article shall be construed as applying to State of Florida licensed barbers, cosmetologists, manicurists, pedicurists, physical therapists, physical therapists' assistants, midwives, practical nurses, agents, servants or employees in licensed hospitals or nursing home or other licensed medical institutions, licensed physicians, osteopaths, chiropractors, podiatrists, naturopathic physicians or other licensed medical practitioners, or their agents, servants or employees acting in the course of such agency, service or employment under the supervision of the licensee.~~

~~(3) Provided, however, that, for the purpose of this article, the term "massage establishment" shall not include any massage establishment wherein at least one State of Florida licensed masseur or masseuse is employed and on duty fulltime during the hours open for business.~~

~~Specified sexual activities shall mean and include:-~~

~~(1) Human genitals in a state of sexual stimulation or arousal;~~

~~(2) Acts of human masturbation, sexual intercourse or sodomy; and~~

~~(3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.~~

~~Specified anatomical areas shall mean and include:-~~

~~(1) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola; and~~

~~(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.~~

~~Cross references: Definitions and rules of construction generally, § 1-2.~~

### **Sec. 13-67. Distance limitations between designated uses.**

~~In the development, enforcement and amendment of this article, it is recognized that there are uses and accessory uses which because of their very nature are recognized as having serious objectionable characteristics particularly when several of them are concentrated in any given location, thereby having a deleterious effect upon the adjacent business and residential areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting and down grading of the surrounding neighborhood. None of the designated uses set forth in section 13-68, or added from time to time to this article by amendment, shall be located nearer to the same or any other designated use nor nearer to any church or public, private or parochial kindergarten, nursery, elementary, middle or high school or day care centers or residentially zoned district than one thousand (1,000) feet measured along the shortest measurement being between the nearest entrance to the designated use and the nearest point on the plot occupied by the church or school.~~

~~(Code 1964, § 10-18)~~

~~Cross references: Zoning, Ch. 27.~~

### **Sec. 13-68. Designated uses established.**

For the purposes of this article, the following uses are to be considered designated uses:

(1) Adult book store;

(2) Adult motion picture theater;

(3) Adult mini motion picture theater;

(4) Cabaret;

(5) Massage establishment;

(6) Encounter studio.

(Code 1964, § 10-19)

**~~Sec. 13-69. Application to new churches and schools.~~**

~~Where a designated use is located in conformity with the provisions of this article, the subsequent locating of a church or school within one thousand (1,000) feet or a residentially zoned district within one thousand (1,000) feet of such existing designated use shall not be construed to cause such designated use to be in violation of this article.~~

~~(Code 1964, § 10-20)~~

**~~Sec. 13-70. Article not retroactive.~~**

~~The provisions of this article shall not be construed to be retroactive, and any existing designated use which conformed to the regulations in effect when such designated use was established shall not be rendered illegal or in violation through the adoption of this article or amendments to this article, so long as to the occupational license issued for such use remains in full force and effect and is renewed in a timely manner.~~

~~(Code 1964, § 10-21)~~

**13-67. Definitions.**

**Adult Arcade:** Means any place to which the public is permitted on invited wherein coin-operated, slug-operated, or electronically, electrically or mechanically controlled still or motion picture machines. Projectors, video, disc or other image producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting or describing “specified sexual activities” or “specified anatomical areas.”

**Adult Bookstore, Adult Novelty, Store or Adult Video Store:** means a commercial establishment which has significant or substantial portion of its stock – in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising or maintains a substantial space to the sale or rental, for any form of consideration of any one or more of the following:

- (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas.”
- (b) Instruments, devices, sexually oriented toys or novelties, paraphernalia, lingerie or leather goods marketed or presented in a context to suggest their use for Sadoomasochistic practice, which are designed for use in connection with specified sexual activities.

**Adult Cabaret:** means a Night Club, Bar, Juice Bar, Restaurant, Bottle Club or similar commercial establishment whether or not alcoholic beverages are served which regularly features:

- (a) persons who appear in a state of nudity or semi-nude; or
- (b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- (c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

**Adult Motel:** means a motel, hotel, or similar commercial establishment which:

- (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and which advertises the availability of such material by means of a sign visible from the

- public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
- (b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
  - (c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

**Adult motion picture theater:** For the purpose of this chapter, the term “adult motion picture theater: means a commercial establishment where films, motion pictures, videocassettes, slides, DVD’s, or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas” are regularly shown for any form of consideration.

**Adult Sexual Encounter Establishment:** a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration:

- (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) physical contact between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude.
- (c) Sadomasochistic practices.

**Controlling Interest:** means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty per cent or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

**Distinguished or characterized by an emphasis upon** means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or description of Specified Sexual Activities or Specified Anatomical areas,” the films so described are those whose dominant or principal character and theme are the exhibition or description “specified anatomical areas” or “specified sexual activities.”

**Duty of the Operator or Manager:** means a set of affirmative duties required of an operator or manager, regarding the operation, maintenance and compliance of all regulations in this Chapter pertaining to sexually oriented business uses.

**Employ, Employee, and Employment:** describe and pertain to any person who performs any service on the premises of sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

**Establishment:** means an economic unit where business is conducted or services or industrial operations are performed. An establishment also means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.

**Hearing Officer:** shall mean the Town Council of the Town of Davie.

**Lap Dance:** means the use by an employee, whether clothed or partially or totally nude, of a part of his or her body to touch, massage, rub, stroke, caress, or fondle the genital or pubic area of a person while at the establishment, or touching of the genital or pubic area of an employee by a person while at the establishment. It shall be a lap dance regardless of whether the touch or touching occurs while the employee is displaying or exposing a specified anatomical area. It shall also be a lap dance regardless of whether the touch or touching is direct or through a medium.

**Licensee:** shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individuals listed as an applicant on the application for a sexually oriented business license. In case of an “employee,” it shall mean the person in whose name the sexually oriented business employee license has been issued.

**Massage establishment:** means and includes any shop, parlor, establishment or place of business wherein all or any one (1) or more of the following named subjects and methods of treatments, are administered or practiced if, at any time, an employee displays any specified anatomical areas during the course of treatment:

- (1) Oil rubs, salt glows, hot or cold packs, all kinds of baths including steam rooms, cabinet baths, sitz baths, colon irrigations, body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), applying such movements as stroking, friction, rolling, vibration, kneading, cupping, petrissage, rubbing, effleurage or tapotement.
- (2) Nothing in this chapter shall be construed as applying to State of Florida-licensed barbers, cosmetologists, manicurists, pedicurists, physical therapists, physical therapists assistants, midwives, practical nurses, agents, servants or employees in licensed hospitals or nursing home or other licenses medical institutions, licensed physicians, osteopaths, chiropractors, podiatrists, naturopathic physicians or other licenses medical practitioners or their agents, servants or employees acting in the course of such agency, service or employment.

**Nudity or state of nudity:** means the showing of human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

**Operate or cause to operate:** shall mean to cause to function or to put or keep in a state of doing business. “Operator” means any persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the Business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

**Operator/Manager:** means the person in the place of business at any time responsible and charged with the duty of supervising, operating or managing such businesses at such time.

**Regularly features or regularly shown:** means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.



**Sadomasochistic practices:** means the flagellation, torture or humiliating activities by or upon a person clothed or naked, or the condition of being fettered, bound or otherwise physically restrained on the part of one clothed or naked or other similar activities which depicts, describes or relates to the “specified sexual activities” or “specified anatomical areas,” as defined in this Chapter.

**Semi-nude, state of semi-nudity, or semi-nude condition:** means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

**Sexually Oriented Business:** means and includes Adult Arcades, Adult Bookstores, Adult Novelty, Adult Video, Adult Cabaret, Adult Motels, Adult Motion Picture Theaters, Semi-Nude Model Studios and Adult Sexual Encounter Establishments.

**Specified Anatomical Areas:**

- (a) means the human genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

**“Specified Criminal Activity:** means any of the following offenses:

- (a) Fla. Stat. § 787.025 (luring or enticing a child); Fla. Stat. § 794.011 (sexual battery); Fla. Stat. § 794.05 (unlawful sexual activity with certain minors); Fla. Stat. Ch. 796 (prostitution offenses); Fla. Stat. Ch. 800 (lewdness; indecent exposure); Fla. Stat. Ch. 847 (obscenity); Fla. Stat. Ch. 815 (racketeering); Fla. Stat. § 896.101 (Florida Money Laundering Act); Fla. Stat. 893.13 (controlled substance offenses); criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses if the acts had been committed in Florida; for which:
  - 1. less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
  - 2. less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  - 3. less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- (b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

**Specified Sexual Activities:** means any of the following:

- (a) human genitals in a state of sexual stimulation or arousal.
- (b) the fondling of other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (c) sex acts, normal or perverted, actual or simulated, including acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic practices, felatio or cunnilingus;

- (d) excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

**Viewing Room:** means the room, booth or area where a patron of a sexually oriented business would ordinarily be positioned when watching a film, video cassette or other video reproduction.

### **13-68. Classification.**

Sexually oriented businesses shall be classified as follows:

- (1) Adult Arcades
- (2) Adult Bookstores/Adult Novelty Stores/Adult Video Stores
- (3) Adult Cabaret
- (4) Adult Motels
- (5) Adult Motion Picture Theaters
- (6) Adult Sexual Encounter Establishments
- (7) Semi-Nude Model Studios

### **13-69. License Required.**

- (1) It shall be unlawful for any person to operate a sexually oriented business in the Town of Davie without a valid sexually oriented business license.
- (2) An applicant for a sexually oriented business license shall file in person at the Occupational License Office within the Development Services Department a completed application made on a form provided by the Department. The application shall be signed by the applicant and notarized and shall state that the applicant is swearing or affirming all information on the application is true and correct. An application shall be considered complete when it contains the information required in paragraphs (a) through (e) as follows.
  - a. The applicant shall state their legal name, alias or any other names in the last five (5) years, along with proof that the applicant is 18 years of age.
  - b. Current business address or another mailing address of the applicant.
  - c. The business name, location, legal description, mailing address and phone number of the sexually oriented business.
  - d. The name and business address of the statutory agent or other agent authorized to receive service of process.
  - e. A statement of whether the applicant has been convicted or has pled guilty or nolo contendere, regardless of whether adjudication is withheld to a specified criminal activity as defined in this ordinance and if so, the specified criminal activity involved, including the date, place and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

The information provided pursuant to Paragraphs (a) through (e) of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Planning & Zoning Manager within ten (10) working days of a change of circumstances which would render the information originally submitted incorrect or incomplete.

- (3) A person, who wishes to operate a sexually oriented business, must sign the application for a license as an applicant. If a person other than an individual wishes to operate a sexually oriented business, all persons legally responsible for the operations of the sexually oriented business or who have power to control or direct its operations must sign the application for a license as applicant. Such persons include, but are not limited to, general partners, corporate officers, corporate directors, and controlling shareholder(s).

- (4) An application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Section 13-79 of this chapter shall submit a diagram indicating that the premises meets the requirements of those sections.

### **13-70. Issuance of License.**

- (1) Within twenty days (20) of the completed application, the Planning and Zoning Manager shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Planning and Zoning Manager shall approve the issuance of a license unless one or more of the following is found to be true.
- a. An applicant is less than eighteen (18) years of age.
  - b. An applicant has failed to provide information as required by Section 13-69 for issuance of a license or has falsely answered a question or request for information on the application form.
  - c. The license application fee required by this Chapter has not been paid.
  - d. An applicant has had a license revoked under this chapter within one (1) year preceding the date of application.
  - e. The sexually oriented business premises is not in compliance with the interior configuration requirements of this Chapter, or the Florida Building Code and other related codes, or is not in compliance with locational requirements established in the applicable zoning regulations.
  - f. An applicant has been convicted of a specified criminal activity, as defined in this ordinance.
- (2) The license, if granted shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

### **13-71. Fees.**

The initial license and annual renewal fee for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows:

- (1) Sexually oriented business – Four hundred sixty eight dollars \$468.00

### **13-72. Inspection.**

- (1) Sexually oriented businesses and sexually oriented business employees shall permit officers or agents of the Town of Davie to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually

oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such as inspection shall not constitute a misdemeanor, but shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the Town to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

- (2) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer at that time for use as a permanent or temporary habitation.

### **13-73. Expiration of License.**

- (1) Each sexually oriented business license or employee license shall remain valid for a period of over one (1) year from October 1<sup>st</sup> through September 30<sup>th</sup> unless otherwise suspended or revoked. A sexually oriented business license or employee license received after April 1<sup>st</sup> of any year shall be listed as half-year license and shall be assessed for a half year fee.
- (2) Applications for renewal of a sexually oriented business license or employee license shall be made at least sixty (60) days before expiration and applicable license fees shall be payable on or before October 1<sup>st</sup> of the new year. Failure to file for renewal within the stated time above may be grounds for suspension of the sexually oriented business license or employee license.

### **13-74. Suspension.**

- (1) The Town shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this Chapter.

### **13-75. Revocation.**

- (1) The Town shall issue a letter of intent to revoke a sexually oriented business license if the licensee commits two or more causes of suspension in Section 13-74 within a twelve month (12 month) period.
- (2) The Town shall issue written intent to revoke a sexually oriented business license, if it determines that:
  - a. The licensee has knowingly given false information in the application for the sexually oriented business license.
  - b. The licensee has knowingly engaged in or allowed possession, use, or sale of controlled substances on the premises.
  - c. The licensee has knowingly engaged in or allowed prostitution on the premises;
  - d. The licensee knowingly operated the sexually oriented business during a period of time when the license was suspended;
  - e. The licensee has knowingly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.
- (3) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

- (4) Nature of Revocation. When, after the notice and hearing procedure described in Section 13-76, the Hearing Officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective, provided that, if the conditions of Section 13-76(2) are met, a Provisional License will be granted pursuant to that section.

### **13-76. Hearing; Denial, Revocation and Suspension; Appeal**

- (1) If the Town determines that facts exist for denial, suspension, or revocation of a license under this chapter, the Town shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the Planning and Zoning Manager for the respondent. Within ten (10) working days of receipt of such notice, the respondent may provide to the Planning and Zoning Manager a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended, or revoked.

With five (5) days of the receipt of respondent's written response, the Planning & Zoning Manager shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding. Within twenty (20) working days of the receipt of respondent's written response, the Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Town's witnesses. The Town shall also be represented by counsel, and shall bear the burden of proving the grounds for deny, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written opinion within five (5) days after the hearing.

If a court action challenging the Town's decision is initiated, the Town shall prepare and transmit to the court a transcript of the hearing within ten (10) days after the issuance of the Hearing Officer's written opinion. If a response is not received by the Planning and Zoning Manager in the time stated, or, if after the hearing the Hearing Officer finds that grounds as specified in this Ordinance exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the Town sends, by certified mail, written notice to the respondents that the license has been denied, suspended or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the Hearing Officer shall order the Planning and Zoning Manager to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. The Planning and Zoning Manager shall contemporaneously therewith issue the license to the applicant.

- (2) When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal and obtain prompt judicial review of such action in a court of competent jurisdiction, including the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida.

### **13-77. Transfer of License.**

A licensee shall not be permitted to transfer a Sexually Oriented Business license to another person or entity, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

### **13-78. Hours of Operation.**

No sexually oriented business, except for an Adult Motel shall be open for business between 2:00 am through 8:00 am.

### **13-79. Regulations Pertaining to Sexually Oriented Business Uses.**

#### **(1) Exhibition of sexually explicit films or videos**

- a. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) feet of floor space, a film, a video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following additional requirements.
  1. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Planning and Zoning Manager may waive the forgoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  2. The application shall be sworn to be true and correct by the applicant.
  3. No alteration in the configuration or location of a manager's station or viewing room may be made without prior approval of the Town.
  4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 1 of this subsection.
  5. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) foot candle as measured at the floor level. It shall be the duty of the operator, and of any

- employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
6. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.
  7. It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.
  8. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no openings of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.
  9. It shall be the duty of the operator, and of any employee who discovers two or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort such persons from the premises.
  10. It shall be the duty of the operator, or of any employee, who discovers an opening of any kind between viewing rooms to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repairing openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.
  11. It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind, documented by appropriate logs.
  12. It shall be the duty of operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
    - a. The no loitering is permitted in viewing rooms.
    - b. That the occupancy of viewing rooms is limited to one person.
    - c. That sexual activity on the premises is prohibited
    - d. That the making of openings between viewing rooms is prohibited.
    - e. That violators will be required to leave the premises.
    - f. That violations of Subparagraphs (b), (c) and (d) of this paragraph are unlawful.
  13. It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.
  14. It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of or permanently covered by nonporous easily cleanable material.
  15. It shall be the duty of the operator to ensure that premises are clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures:
    - a. The operator shall maintain a regular cleaning schedule of at least two cleanings per day, documented by appropriate logs.
    - b. The operator shall provide an employee to check all areas for garbage, trash, body fluids and excrement and to remove and clean all areas with a disinfectant.

- c. Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.
- 16. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this paragraph must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employee present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- 17. It shall be the duty of the operator or manager of the business to ensure that no sexually oriented entertainment activity or visual depictions characterized by an emphasis on actual "specified anatomical areas" or "specified sexual activities" are visible from a public right of way adjacent to the establishment.
  - a. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(2) Sexually Oriented Business – Adult Cabaret Design Standards

- a. Any building used for the operation of a adult cabaret shall meet the following design standards.
  - 1. Stage Required - The building shall include one or more stages, on which all performances shall take place. Each such stage shall be in a room open to all customers of the establishment and containing a minimum of 600 square feet of floor area. The stage shall be raised a minimum of 18 inches above the level of the floor on which customers stand or are seated and shall be further separated from customers by a rail or other barrier a minimum of 30 inches high. If the stage is a minimum of 30 inches high, the additional barrier shall not be required.
  - 2. Performance Areas –
    - a. All performances and interactions between performers and customers shall occur so that the performers (and any customer directly involved) are visible from the room in which the stage is located. No doors, curtains, screens, or other devices shall be used to obscure any part of the room.
  - 3. Lighting – The lighting level of the primary area occupied by customers shall be a minimum of five footcandles at a height of three feet above the floor. This lighting standard shall not apply to the stage but shall apply in any hallway or other access area to the stage.



4. Sign – All Adult Cabarets shall post at least one (1) sign which states that patrons may not touch the employees.

(3) Sexually Oriented Business – Adult Motion Picture Theaters Design Standards

- a. Any building used for the operation of an Adult Motion Picture Theater shall meet the following Design Standards:
  1. Presentation Area – All screenings and presentations of motion pictures, videos or other media shall occur in a room open to all customers of the establishment and containing a minimum of 600 square feet of floor area. No doors, curtains, screens, or other devices shall be used to obscure any part of the room.
  2. Lighting – The lighting level in the area occupied by customers shall be a minimum of two footcandles at floor level.
  3. Seating - Seating shall consist of individual, theater-style chairs, with solid arms separating the chairs. No couches, benches, individual chairs, beds, loose cushions, mattresses or other forms of seating may be provided. Separate spaces for wheelchairs shall be provided in accordance with the applicable provisions of the Florida Building Code and the Americans with Disabilities Act.
  4. Main Aisle – A continuous main aisle alongside of the seating areas shall be provided in order that each person seated in the areas shall be visible from the aisle at all times.
  5. Patron Conduct; Duty of the Operator – it shall be the duty of the Operator to ensure that no sexual or other illicit activity occurs in or on the licenses premises.

(4) Sexually Oriented Business – Additional General Standards

- a. Notwithstanding all other requirements contained in this chapter, each sexually oriented business use shall adhere to the following general requirements:
  1. Conform to all applicable building statutes, codes, ordinances, and regulations, whether federal, state, or local; and
  2. Conform to all applicable fire statutes, codes, ordinances, and regulations, whether federal, state, or local; and
  3. Conform to all applicable health statutes, codes, ordinances, and regulations, whether federal, state, or local; and
  4. Conform to all applicable zoning regulations and land use laws, whether state or local; and
  5. Conform to all applicable sign regulations, whether state or local; and
  6. Opaquely cover each non-opaque area through which a person outside the establishment may otherwise see inside the establishment.
- b. A sexually oriented business shall be located within and shall be the sole occupant of a free standing building and not part of a larger commercial structure.
- c. For the purpose of this Chapter, Retail bookstores, news stands and video stores that carry materials characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are permitted to carry such materials and not be construed to be a sexually oriented business subject to the compliance with the following provisions:
  1. All materials are kept in an access controlled back room.
  2. The percentage of floor area or inventory is not forty (40) percent or greater.

- d. In conjunction with the posting of the business license in 13-70(3), each sexually oriented business use shall be required to post the name of the manager on duty and a copy of the manager's employee license.

(5) Permitting Employees to engage in Prohibited Acts; Duty of the Operator – It shall be the duty of the operator to ensure that all employees:

- a. Do not engage in a lap dance with a person at the establishment; or
- b. Contract or otherwise agree with a person to engage in a lap dance with a person at the establishment; or
- c. To contract or otherwise agree with a person to engage in specified sexual activity at the establishment; or
- d. To display or expose a specified anatomical area while simulating a specified sexual activity with another person at the establishment, including with another employee.

**13-80. Loitering and Exterior Lighting and Monitoring Requirements**

(1) It shall be the duty of the operator of a sexually oriented business to:

- a. Post conspicuous signs stating that no loitering is permitted on such property;
- b. Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and
- c. Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station.
- d. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

**13-80.1 Penalties and Enforcement**

- (1) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be subject to a penalty, not to exceed five hundred dollars (\$500.00) and sixty (60) days in jail, upon proper adjudication in a court of competent jurisdiction. Each day the violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- (2) The Town Attorney is hereby authorized to institute proceedings necessary for the enforcement of this article to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the Town provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal proceedings as may be authorized by other provisions of the Town Code, or any of the laws or ordinances in force in the Town or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

**13-80.2. Applicability of Article to Existing Businesses**

- (1) Upon the passage of Ordinance No. \_\_\_\_\_ the provisions of this article shall apply to the activities of all sexually oriented businesses described herein, regardless of whether such

businesses or activities were established or commenced before, on, or after the effective date of this article, provided that:

- (a) All existing sexually oriented businesses are hereby granted a *de facto* temporary license to continue operation or employment for a period of sixty (60) days following the effective date of this article.
- (b) Within said sixty (60) days, all sexually oriented businesses must make application for a license pursuant to this article.
- (c) Within said one hundred eight (180) days, all sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises (e.g., building a stage, removing doors from video booths) to conform to this article. This 180 day grace period for making interior configuration changes shall not relieve the sexually oriented business and its employee of the duty to maintain the distance of six (6) feet between semi-nude employees and patrons, as required by Section 13-80.3(1)b, nor shall it relieve the business and its employees of the duty to abide by the provisions of subsections 13-80.3(1) a.,c.,d.

### **13-80.3. Prohibited Activities**

- (1) It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations:
  - a. It shall be a violation of this article for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.
  - b. It shall be a violation of this article for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of a least six hundred (600) square feet.
  - c. It shall be a violation of this article for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.
  - d. It shall be a violation of this article for any person to sell, use or consume alcoholic beverages on the premises of a sexually oriented business. This provision does not apply to Adult Motels.
- (2) A sign in a form to be prescribed by the Planning and Zoning Manager and summarizing the provisions of Paragraph (a) thorough (d) of subsection (1) shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entering.

### **13-80.4. Scienter Required to Prove Violation or Business License Liability**

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation a license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly, or with constructive knowledge, allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

**13-80.5. Failure of Town to meet Time Frame not to Risk Applicant Licensing Rights.**

In the event that a Town official is required to take an act or do a thing pursuant to this article within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the Town under this article is not completed in the time prescribed, includes approval of condition(s) necessary for approval by the Town of an applicant or licensee's application for a sexually oriented business license (including a renewal), the applicant or licensee shall be allowed to commence operations or employment the day after the deadline for the Town's action has passed.

**13-80.6. Severability**

This article and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not effect the enforceability of the substantive aspects of this article.

**SECTION 2:** All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

**SECTION 3:** It is the intention of the Town Council of the Town of Davie that this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Davie, Florida and that Sections of this Ordinance may be renumbered, re-lettered and the word "ordinance" may be changed to "section", "article" or such other word or phrase in order to accomplish such intention.

**SECTION 4:** This Ordinance shall take effect immediately upon its passage.

PASSED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006

PASSED ON SECOND READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006